IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 5778 of 1981
Date of Decision: 22.8.2007

Sohan Lal ...Petitioner

Versus

Union of India etc. ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Balram Gupta, Senior Advocate, with
Shri Shireesh Gupta, Advocate, for the petitioner.

Shri Anil Rathee, Advocate, for the respondents.

HEMANT GUPTA, J.

The claim of the petitioner in the present writ petition is for directing the respondents to consider the case of the petitioner for promotion to the post of Sub Inspector in the Border Security Force.

The petitioner was originally recruited as a constable in the Punjab Armed Police on 3.9.1965. The petitioner was taken into the Border Security Force on 1.7.1966. He was promoted as Lance Naik on 1.7.1967 and as Head Constable on 10.11.1970. It is the case of the petitioner that he was eligible for promotion to the post of sub Inspector after appearing in D-list test conducted in the year 1973. However, he was not permitted to appear in the said test as his experience was found to be short of required minimum.

After becoming eligible, the petitioner appeared in the D-list test conducted in the year 1976 by the Test Board at Indore. The

procedure for preparation of List-D is contained in circular dated 2.9.1976 (Annexure P.1). The suitability for promotion is required to be adjudged on the basis of physical fitness, map reading, knowledge of weapons, field and craft and tactics, administration, power of expression, interview etc. It is the case of the petitioner that though his Annual Confidential Reports for the relevant period were average/above average and he qualified physical and ground test, but his name was not amongst the successful candidates when the result was declared in the year 1979. The claim of the petitioner is that various commendation rewards for meritorious services rendered by the petitioner, have not been taken into consideration by the Board and that the courses undertaken by the petitioner and the role of the petitioner in Bangla Desh operation, have not been given due consideration. The petitioner submitted a representation pointing out the various deficiencies in the manner of consideration of the name of the petitioner for promotion but the same was rejected on 12.3.1981.

In written statement, it has been pointed out that in terms of the promotion policy, a candidate has to secure 50% marks in each group and 60% in aggregate to qualify D-list test. It is pointed out that the petitioner qualified test only by securing 50% of the above marks but he failed to make 60% aggregate, therefore, his name does not figure in the list of successful candidates. It is also pointed out that the Board has considered the entire service record of the petitioner; awarded marks for the courses and other credentials in accordance with the Rules and existing statutory instructions. In respect of the role in the Bangla Desh operation, it was pointed out that the benefits are applicable to Subedars (Inspectors), Assistant Commandants, Deputy Commandants, eligible for promotion to

the next higher ranks and not in the case of the petitioner, who is a Head Constable. It was pointed out that the petitioner has misconstrued the facts regarding special report of Bangla Desh Operation in view of the letter dated 28.12.1971. It was also pointed out that the petitioner has made claim of having undergone six courses, which have not been taken into consideration but as per the record three courses as mentioned by the petitioner are not borne on the record. In respect of the other three, the petitioner has undergone such courses after the test was held on 19.12.1976. Thus, there is no merit in the writ petition.

The case of the petitioner is based upon three claims as pleaded in para No. 11 (i) of the writ petition, which read as under:-

> "(a) Courses done
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> (i) Field Engineers Course;
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> (ii) Army Pioneer Course;
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> (iii) Reorientation Course;
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> (iv) Kashmir Language Course;
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> (v) Weapons & Tactics Course;
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> (vi) Unit Education and Map Reading Instructions Course; as submitted in representation (Annexure P.2)
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> (b) Achievements in Indo-Pak War of 1971 as submitted in representation (Annexure P.2).
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> (c) Various Awards/Commendations earned by the petitioner and the fact that no negative award was ever given to the petitioner as submitted in representation at Annexure P.2."

In respect of such claim of the petitioner, the respondents have given the following reply:-

"(a) The petitioner has not done any platoon Comdr. course which is essential for `D' list candidates. Three out of six courses claimed to have been done by the petitioner were undergone much after the `D' list tests which was held in Dec. 1976. The period of each of these courses done by the petitioner is given as under:-

1. Field Engineering Course from 4.4.77 to 28.5.88;
2. Weapons and Tactics Course from 2.4.79 to 16.6.79;
3. Unit Education and MR instructor course from 7.11.77 to 7.5.78.

The remaining three courses are not borne on records and the petitioner has never pointed out this fact to the authorities whereas he has gone through his Service Book every year and endorsed certificate for its correct maintenance. It is further submitted that no mark is awardable for other than career courses of ESSENTIAL and DESIRABLE categories laid down in the promotion policy letter annexed to the petition as Annexure P-1.

(b) Denied in view of position explained in para 7 above.

(c) It is reiterated that all the awards/commendations at the credit of the petitioner were duly assessed and due credence was awarded but it is denied that the petitioner was confirmed in the rank of Head Constable. As already submitted in sub para (a) above, the petitioner has certified the correctness of record every year."

It is the admitted fact from the documents produced by the petitioners as Annexures P.8 to P.10 that the courses referred to by the petitioner, were in fact, undergone by the petitioner after the test was held in 1976. The other three courses are not borne on the record. Therefore, the first ground remains unsubstantiated.

In respect of ground (b), the petitioner has claimed credit for his role in Bangla Desh operation. In para No. 7 of the written statement, the respondents have pointed out that the special report of Bangla Desh operation is applicable to Subedars (Inspectors), Assistant Commandants, and Deputy Commandants and not to the Head Constables. It may be noticed that in procedure for preparation of Annexure P.1, the system of marking is in respect of Annual Confidential Reports and to award positive marks for medal for gallantry; meritorious service; DG commendation roll; cash rewards and good entries. The negative marking is for major and minor punishment. Therefore, it cannot be said that the role of the petitioner in Bangla Desh operation was compulsorily required to be credited at the time of consideration of the case of the petitioner for the post of Sub Inspector.

In respect of ground (c), there is nothing on record to show that any award or commendation has not been taken into consideration.

Therefore, I do not find that the process of consideration of the petitioner for promotion for the post of Sub Inspector, is vitiated on account of non consideration of any material fact. Consequently, I do not find any ground to interfere in the process of consideration of the petitioner for the promotion to the post of Sub Inspector, in the extra-ordinary writ jurisdiction of this Court. Hence, the present petition is dismissed.

August 22, 2007 (HEMANT GUPTA)
ds JUDGE